

AG Contract No. KR03-1035TRN
ADOT ECS File: JPA 03-074
Project No. HRF-ORV-0-790
TRACS No. HF 079 01D & 01C
Item No. : N/A
Section: Tangerine/LaCholla Blvd
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF ORO VALLEY

THIS AGREEMENT is entered into 22nd September, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and TOWN OF ORO VALLEY acting by and through its TOWN COUNCIL (the "Town")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-6993(g) to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 9-240 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. The State has approved the exchange of \$70,000.00 Highway User Revenue Funds (HURF) in Fiscal Year 2003 to the Town for the **design** of improvements to Tangerine and LaCholla Boulevard intersection, and such funds will be repaid to the State by withholding from the Pima Association of Governments (PAG) federal funds and the obligation authority for federal funds in the amount of \$74,640.00 in Fiscal Year 2003.

4. The State has approved the exchange of \$515,000.00 in Highway User Revenue Funds (HURF) in Fiscal Year 2003 to the Town for the **construction** of improvements to Tangerine and LaCholla Boulevard intersection, and such funds will be repaid to the State by withholding from the Pima Association of Governments federal funds and the obligation authority for federal funds in the amount of \$549,146.00 in Fiscal Year 2003.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows

NO. 26315
Filed with the Secretary of State
Date Filed: 09/22/03

James H. Powers
Secretary of State

By: Timothy J. Greenwald

II SCOPE OF WORK

1. The Town will:

a. Provide design documents of the improvements contemplated for Tangerine and LaCholla Boulevard intersection to the State. Provide the State suitable documentation of design together with invoices.

b. Be responsible for any additional funds required for design of the project. Comply with all applicable State laws, rules and regulations.

c. Invoice the State in an amount not to exceed \$70,000.00 for reimbursement for the costs of design.

d. Call for bids and award one or more construction contracts for the project. Administer same and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project.

e. Invoice the State for thirty percent of the project construction cost, at the start of construction.

f. Invoice the State for thirty percent of the project construction cost, at the sixty percent project construction completion stage, and for thirty percent of the project cost at the ninety percent project construction completion stage.

g. Upon final project review, by the Town, PAG, and the State representatives, invoice the State for the remaining ten percent of the project construction cost at the one hundred percent project completion stage.

h. Be responsible for any additional funds required for construction of the project, and for any claims for extra compensation for whatever reason. Comply with all applicable State laws, rules and regulations.

i. Upon completion, approve and accept the project as complete and provide maintenance. Provide ADOT with a letter documenting the notice of the approval and acceptance of the project.

2. The State will:

a. Within 30 days after receipt and approval of a design invoice, advance the Town in an amount not to exceed of \$70,000.00 in HURF funds for design.

b. Within 30 days after receipt and after award of construction project, advance the Town an amount not to exceed thirty percent of the total construction amount.

b. Within 30 days after receipt and approval of construction invoices at the sixty and ninety percent construction completion stages, advance the Town HURF funds in the amount of thirty percent at each invoiced stage for construction.

c. Within 30 days after receipt and approval of construction invoices for the remaining ten percent of the project construction, advance the Town HURF funds in the final ten percent amount of the \$515,000.00 for construction.

d. Withhold from PAG, federal funds and the obligation authority of federal funds \$74,640.00 in Fiscal Year 2003 for design.

e. Withhold from PAG, federal funds and the obligation authority of federal funds in the amount of \$549,146.00 in Fiscal Year 2003 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007

Town of Oro Valley
Town Clerk
11000 North La Canada Drive
Oro Valley, AZ 85737-7015

8. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State and the Town under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and the Town at the end of the period for which the funds are available. No liability shall accrue to the State and the Town in the event this provision is exercised, and the State and the Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.


10. In Accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF ORO VALLEY

STATE OF ARIZONA

Department of Transportation

By 
PAUL LOOMIS
Mayor

By 
DALE BUSKIRK, Acting Division Director
Transportation Planning Division

ATTEST

By 
KATHRYN CUVELIER
Clerk of the Town

RESOLUTION NO. (R) 03- 70

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING AND APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF ORO VALLEY AND THE STATE OF ARIZONA TO UTILIZE THE HURF EXCHANGE PROGRAMS FOR THE TANGERINE ROAD AND LA CHOLLA BOULEVARD INTERSECTION IMPROVEMENTS

WHEREAS, ORO VALLEY is a political subdivision of the State of Arizona, is vested with all the rights, privileges and benefits, and entitled to immunities and exemptions granted municipalities and political subdivisions under the constitution and laws of the state of Arizona and United States; and

WHEREAS, the Tangerine Road/La Cholla Blvd. intersection improvement project is necessary for the public's health, safety and welfare in order to provide for the safe, preserve Town assets and efficient movement of traffic; and

WHEREAS, pursuant to Arizona Revised Status, Section 28-6993(f) local government may exchange Surface Transportation Program monies for state highway funds so named the State the HURF Exchange Program; and

WHEREAS, the TOWN COUNCIL deems it necessary in the interest of providing for health, safety and welfare of the citizens of the TOWN OF ORO VALLEY to enter into an intergovernmental agreement with the State of Arizona for a HURF Exchange for the Tangerine Road/La Cholla Boulevard intersection improvements.

THEREFORE, BE IT RESOLVED, BY THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA:

That Mayor is authorized to execute the intergovernmental agreement on behalf of the Town of Oro Valley.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona this 20th day of August, 2003.


TOWN OF ORO VALLEY, ARIZONA




Paul H. Loomis, Mayor

ATTEST:

APPROVED AS TO FORM:


Kathryn E. Cuvelier, Town Clerk

8-25-03
Date


Mark Langlitz, Town Attorney

Date

APPROVAL OF THE TOWN OF ORO VALLEY ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF ORO VALLEY, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 20th day of August, 2003.



City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1035TRN (JPA 03-074), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED September 10, 2003.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script that reads "Susan Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.